ODESSA NATURAL CORPORATION

IBLA 77-20 Decided April 11, 1977

Appeal from decision of the Montana State Office, Bureau of Land Management, holding that oil and gas lease M-15637 automatically terminated by operation of law for failure to pay rental timely.

Set aside and remanded.

1. Oil and Gas Leases: Assignments or Transfers ! ! Oil and Gas Leases: Rentals ! ! Oil and Gas Leases: Termination

When an oil and gas lease is in royalty status and acreage containing the well is segregated into a new lease by approval of an assignment, the nonproductive base lease does not terminate for failure to pay rental timely if the Bureau of Land Management does not inform the lessee of the segregation until after the anniversary date of the lease.

APPEARANCES: Roland L. Hamblin, Esq., for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Odessa Natural Corporation appeals from the September 22, 1976, decision of the Montana State Office, Bureau of Land Management (BLM), dismissing its protest to the determination by the State Office that its oil and gas lease, M-15637, had automatically terminated by operation of law for failure to pay annual rental timely. The basis for the dismissal was that appellant had not paid or tendered the rental within 20 days of the anniversary date of the lease, July 1, 1976, as required for reinstatement under 30 U.S.C. § 188(b) (1970).

Appellant contends that it was without proper notification of actions taken by BLM with regard to its lease. It argues that a royalty payment it submitted to the Casper, Wyoming, office of the

United States Geological Survey (Survey) prior to the anniversary date should be considered a tender of rental sufficient to allow reinstatement.

Noncompetitive oil and gas lease M-15637 was issued effective July 1, 1970. Following various assignments and the segregation of lease M-15637A, BLM approved the assignment to appellant of the base lease, M-15637, consisting of 1,484.76 acres, effective January 1, 1975. The rental rate at that time was $ 2 per acre.

Following the successful completion of a well on the lease, Survey notified appellant by letter dated November 28, 1975, that the lease account had been transferred to its Casper, Wyoming, office for maintenance. The letter stated in part:

> All royalty, minimum royalty and/or rental remittances hereafter should be made by check payable to the U.S. GEOLOGICAL SURVEY, and mailed to P.O. Box 2859, Casper, Wyoming 82601.

Survey also informed appellant in the letter that the lease would be subject to minimum royalty at $ 1 per acre beginning July 1, 1976.

Appellant also received a "Notice of Transfer" dated December 22, 1975, from the BLM State Office. The notice confirmed the transfer of the lease account to Survey and stated in part:

> Beginning with the lease year, July 1, 1976, the lease becomes subject to royalty and/or minimum royalty charges, in lieu of advance rental, in accordance with Regulation 43 CFR 3103.3-5.
>
> All monthly reports must be submitted to the Office of Geological Survey, and further billing notices will originate from that office.

Meanwhile, on December 12, 1975, appellant had filed for approval by the BLM State Office an assignment of 320 acres to Dan L. Duncan and Joe D. Havens. This acreage included the producing well which precipitated the transfer of the lease account to Survey. No action was taken by BLM on the assignment until April 7, 1976, when a notice was sent to appellant and the assignees allowing 60 days within which either to withdraw the assignments (more than one lease had been submitted for assignment approval) or to furnish a "Rider" conditioning the $ 25,000 Unit of Coverage for Public Domain leasing activities as specified in the notice. The case file indicates this "Rider" was

filed April 22, 1976, at which time the assignment was approved effective May 1, 1976. The new lease was designated M-15637B. Appellant alleges that it was not notified of the segregation until the BLM State Office issued its notice of termination on September 10, 1976.

In June 1976 appellant sent a check for $ 1,485 to Survey for $ 1 per acre minimum royalty. Survey returned this check on July 14, 1976, and stated in its covering letter:

> Minimum royalty obligation cannot be determined at this time, the amount due will appear on your Statement of Account when the information is available.
>
> No payment is required at this time.

The first indication in the file of notification from BLM to Survey concerning the assignment is a memorandum dated August 9, 1976. Survey notified appellant by letter dated August 26, 1976, that base lease account M-15637 was being returned to BLM. Appellant then telephoned the State Office for information and submitted rental of $ 2,330 (1,484.76 acres less 320 acres in M-15637B times $ 2 per acre) on August 30, 1976. The State Office, on September 10, 1976, issued a notice of termination for failure to pay rental on or before the anniversary date, July 1, 1976. In the notice, the State Office informed appellant that the portion of the lease containing the well was segregated from the base lease effective May 1, 1976. Therefore, the State Office concluded that rental was due on or before the anniversary date, July 1, 1976, because no well capable of producing oil or gas in paying quantities existed on base lease M-15637 on that date. This appeal resulted from appellant's protest to the September 10 notice.

In order to decide properly the issues raised by this appeal, additional information is required. We are therefore remanding the case to the BLM State Office for further consideration. However, the issues are clear enough for us to comment generally on the consequences of appellant's payment of royalty rather than rental for the lease year beginning July 1, 1976.

[1] If appellant did not receive notification of the segregation until the September 10 notice of termination, BLM would have, in effect, retroactively changed the status of appellant's lease from royalty to rental. Appellant would have had no way of knowing on the anniversary date, July 1, that rental was due. We have held in the past that such a retroactive change in lease status will not cause the lease to terminate for failure to pay rental timely. The Polumbus Corp., 22 IBLA 270, 273-74 (1975);

Husky Oil Co., 5 IBLA 7, 79 I.D. 17 (1972); Roy M. Eidal, A-29300 (February 19, 1962). On remand, the BLM State Office should attempt to determine whether or not appellant received notification of the segregation before July 1, 1976. If appellant did not receive notification, the notice of termination should be rescinded and the rental accepted.

If appellant was sent notification of the segregation, the question becomes what kind of notification was sent. It does not appear from the case file that either BLM or Survey informed appellant that because lease M-15637B, containing the producing well, had been segregated, lease M-15637 was no longer in royalty status but was returned to rental status.

The significance of such a notice stems from the December 1975 instructions received by appellant from both Survey and BLM, which are quoted above. Those instructions notified appellant that its lease, M-15637, was in royalty status. Survey instructed appellant to submit "all royalty * * * and/or rental" payments to its Casper office. BLM informed appellant that all "future billing notices will originate from that [Survey] office." Appellant apparently paid minimum royalty in accordance with those instructions. It does not appear from the case file that those instructions were changed prior to July 1. An oil and gas lessee cannot anticipate a change in status from rental to royalty; neither should he be penalized for not anticipating a change of status from royalty back to rental. Cf. The Polumbus Corp., supra at 275.

On remand, the BLM State Office should ascertain what notices, if any, were sent appellant by either its own staff or by Survey. If it appears to the State Office that appellant acted in accordance with the December 1975 instructions and had no reason to believe that it should act differently, then the notice of termination should be rescinded and the rental accepted.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case remanded for further consideration consistent with this opinion.

Joan B. Thompson
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Martin Ritvo
Administrative Judge